

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BRENDAN U. ENERE

v.

COMMISSIONER OF REVENUE

Docket No.: C324456

Promulgated:
June 21, 2017

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39 from the refusal of the appellee, the Commissioner of Revenue ("Commissioner"), to abate income taxes assessed against Brendan U. and Adanma Enere ("taxpayers"),¹ for the tax years 2009 through 2011 ("tax years at issue").

Commissioner Scharaffa heard this appeal and was joined by Chairman Hammond, Commissioners Rose, Chmielinski and Good in the decision for the appellee.

These findings of fact and report are made pursuant to the appellee's request under G.L. c. 58A, § 13 and 831 C.M.R. 1.32.

Adanma Enere, pro se, for the appellant.

Jaime E. Szal, Esq. and Kevin M. Daly, Esq. for the appellee.

¹ Though the assessment giving rise to the present appeal was issued to Brendan and his spouse Adanma Enere, Brendan Enere ("appellant") alone filed the Petition with the Appellate Tax Board ("Board"). Because the assessments at issue related to Ms. Enere's business, she appeared before the Board as the sole witness in this appeal.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Board made the following findings of fact.

The taxpayers timely filed joint Massachusetts Resident Income Tax Returns, Forms 1, for each of the tax years at issue ("Returns"). The Returns reflected wages earned by Mr. Enere and business losses reported on Schedule C (Profit or Loss from Business or Profession) associated with Ms. Enere's business, known as Michi Company ("Michi"), as follows: \$79,100 for tax year 2009; \$62,620 for tax year 2010; and \$154,442 for tax year 2011.

By letter dated October 12, 2012, the Commissioner notified the taxpayers that the Returns had been selected for verification and audit. Having completed the audit and concluded that the taxpayers had not substantiated various sums reported on Schedules C for the tax years at issue, the Commissioner issued a Notice of Intent to Assess ("NIA") dated December 31, 2012. In relevant part, the NIA reflected disallowance of all claimed expense deductions and sums reported for returns and allowances for each of the tax years at issue. The taxpayers then requested a pre-assessment conference with the Department of Revenue's

Office of Appeals, which was conducted by telephone on February 27, 2013. The Office of Appeals issued a determination letter on March 13, 2013, affirming the terms of the proposed assessment. Consistent with this determination, the Commissioner issued a Notice of Assessment ("NOA") dated March 25, 2013, for tax years 2009 and 2010 and an NOA dated March 25, 2013, for tax year 2011. The taxpayers filed Applications for Abatement, Forms CA-6, on April 13, 2013, which the Commissioner denied by Notice of Abatement Determination dated May 12, 2014. The appellant subsequently filed a Petition Under Formal Procedure with the Board on July 1, 2014. Based on the foregoing, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

Throughout the tax years at issue, Ms. Enere owned and operated Michi from her home. Through Michi, Ms. Enere sold used clothing, shoes and accessories in bulk. Ms. Enere operated the company on an "all-cash" basis, acquiring its inventory by paying cash, and accepting payments from customers only in cash. Only customers who planned to ship purchases internationally received invoices from Michi, an accommodation granted for purposes of passing through customs. Ms. Enere did not create any records of domestic sales.

During the course of its examination of the Returns, the Department of Revenue's Audit Bureau requested documentation of sums reported by the taxpayers on Schedules C for the tax years at issue. In response, Ms. Enere, who had prepared the Schedules C, provided copies of bank statements and credit card statements.² These documents, however, reflected commingled personal and purported business transactions, as the taxpayers did not maintain any separate accounts for the operation of Michi. Further, upon review of the statements, Ms. Enere was not able to identify with specificity transactions that would have supported claims for various expense deductions claimed on Schedules C. Seeking to illustrate relevant line items on the Schedules C, Ms. Enere also submitted summary "budget" documents to the Audit Bureau, which she acknowledged had not been used to prepare the Schedules C for the tax years at issue. These documents conflicted with amounts reported on Schedules C and were not supported with relevant documentation. Finally, Ms. Enere admitted that she had not created any books of accounts or records to document the contested expenses. Lacking substantiation of any of the claimed expense deductions at issue in this

² Ms. Enere testified that she had hired an accountant for years following the tax years at issue.

appeal, the Board found and ruled that the deductions had properly been disallowed by the Commissioner.

Ms. Enere had also provided the Audit Bureau with copies of certain invoices for Michi's international customers, but the invoices did not comport with either the gross sales or the returns and allowances that had been reported on Schedules C. Of perhaps greater import, amounts reported for returns and allowances far exceeded reported gross sales for each of the tax years at issue. The Board found that these sums, on their face, were not credible.

Based on the evidence before it and the reasonable inferences drawn therefrom, the Board found and ruled that the appellant failed to sustain his burden of demonstrating the taxpayers' entitlement to an abatement as the record reflected claimed expense deductions that were not substantiated and sums for returns and allowances that implausibly exceeded the sales to which they related for all the tax years at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

An appellant bears the burden of proving his or her right, as a matter of law, to an abatement. See *M & T Charters, Inc. v. Commissioner of Revenue*, 404 Mass. 137,

140 (1989); *Stone v. State Tax Commission*, 363 Mass. 64, 65-66 (1973); see also *Staples v. Commissioner of Corps. and Taxation*, 305 Mass. 20, 26 (1940). To satisfy this burden in the present appeal, the appellant must demonstrate his right to disallowed expense deductions and amounts reported for returns and allowances by the taxpayers on Schedules C for the tax years at issue.

Individuals required to file personal income tax returns in Massachusetts must retain records that will enable the Commissioner to determine the amount of tax due. 830 C.M.R. 62C.25.1(9). In particular, they must preserve and maintain "permanent books of accounts or records, sufficiently accurate and complete to establish the amount of gross income, deductions, credits or other matters." 830 C.M.R. 62C.25.1. Further, individuals who file Schedule C must create and maintain:

such permanent books of account, or records, including inventories, as are sufficient to establish the amount of gross income, deductions, or other items required to be shown on Schedule C of the personal income tax return. Such records must be in sufficient detail and clarity to delineate and support each line item deducted on such Schedule C.

830 C.M.R. 62C.25.1(9).

It is also well-settled under relevant case law that a taxpayer bears the burden of demonstrating his or her

entitlement to claim deductions against Massachusetts income. See *Horvitz v. Commissioner of Revenue*, 51 Mass. App. Ct. 386, 391-92 (2001); see also *Indopco, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992) (affirming that "the burden of clearly showing the right to the claimed deduction is on the taxpayer") (additional citation omitted).

This appeal involves the operation of a business on an all-cash basis with respect to which the taxpayers claimed substantial expenses and facially implausible sums for returns and allowances on Schedules C for the tax years at issue. Ms. Enere did not create or maintain any books of accounts or records to substantiate the contested items. In support of claimed expenses, Ms. Enere provided only bank and credit card statements that contained commingled personal and business transactions, from which she could not identify transactions to support claimed expense deductions on Schedules C. Moreover, copies of invoices for Michi's international customers submitted by Ms. Enere did not comport with either gross sales or returns and allowances reported on Schedules C. Finally, given that reported returns and allowances (which reduce gross sales by refunds to customers and other allowances off the actual sales price) far exceeded reported gross sales for each of

the tax years at issue, the Board found that these sums were not credible. In sum, the appellant failed utterly to present books or records "to establish the amount of gross income, deductions, or other items required to be shown on Schedule C" or "to delineate and support each line item deducted on [] Schedule C." 830 C.M.R. 62C.25.1(9).

Having considered the evidence of record, the Board was compelled to find and rule that the appellant failed to sustain the taxpayers' burden of demonstrating their right to either the contested expense deductions or stated sums for returns and allowances. In turn, the appellant failed to prove the taxpayers' right to an abatement of tax. Accordingly, the Board issued a decision in favor of the appellee in this appeal.

APPELLATE TAX BOARD

By: 

Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: 

Clerk of the Board

Asst.